

B201-979735

COURT FILE NUMBER 25-2979735
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, c B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF GRIFFON PARTNERS OPERATION
CORPORATION, GRIFFON PARTNERS HOLDING
CORPORATION, GRIFFON PARTNERS CAPITAL
MANAGEMENT LTD., STELLION LIMITED, 2437801
ALBERTA LTD., 2437799 ALBERTA LTD., 2437815
ALBERTA LTD., and SPICELO LIMITED

APPLICANTS GRIFFON PARTNERS OPERATION CORPORATION,
GRIFFON PARTNERS HOLDING CORPORATION, GRIFFON
PARTNERS CAPITAL MANAGEMENT LTD.,
STELLION LIMITED, 2437801 ALBERTA LTD., 2437799
ALBERTA LTD., 2437815 ALBERTA LTD., and SPICELO
LIMITED

DOCUMENT **ORDER**
(Sales and Investment Solicitation Process)

ADDRESS FOR SERVICE **OSLER, HOSKIN & HARCOURT LLP**
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Matter: 1247318

DATE ON WHICH ORDER WAS PRONOUNCED: October 18, 2023

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice Dunlop

UPON THE APPLICATION of Griffon Partners Operation Corporation, Griffon
Partners Holding Corporation, Griffon Partners Capital Management Ltd., Stellion Limited,

2437801 Alberta Ltd., 2437799 Alberta Ltd., 2437815 Alberta Ltd., and Spicelo Limited (collectively, the “**Applicants**”) for an order, among other things, approving the Sales and Investment Solicitation Process (“**SISP**”) attached as **Appendix “A”** hereto; **AND UPON** having reviewed the Affidavit of Daryl Stepanic, sworn October 10, 2023, and the Second Report of Alvarez & Marsal Canada Inc. in its capacity as proposal trustee of the Applicants (the “**Proposal Trustee**”) under the Notices of Intention to Make a Proposal of the Applicants, filed August 25, 2023; **AND UPON** hearing the submissions of counsel for the Applicants, counsel for the Proposal Trustee and any other counsel or other interested parties present; **AND UPON** noting that capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the SISP;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.
2. The SISP (subject to any amendments thereto that may be made in accordance therewith and with this Order) is hereby approved, and the Applicants, the Proposal Trustee, and Alvarez & Marsal Canada Securities ULC (the “**Transaction Agent**”) are hereby authorized and directed to implement the SISP in accordance with the terms thereof and do all things as may be reasonably necessary to conduct and give full effect to the SISP and implement and carry out the terms thereof.
3. The Proposal Trustee and the Transaction Agent (and their respective affiliates, partners, directors, employees, agents, consultants, advisors, experts, accountants, counsel and controlling persons) shall have no liability whatsoever for any and all losses, claims, damages or liabilities, of any nature or kind to any person or party for any act or omission related to the SISP, except to the extent such act or omission is the result of gross negligence or wilful misconduct of the Proposal Trustee or the Transaction Agent.
4. The Applicants shall serve by courier, fax transmission, email transmission or ordinary post, a copy of this Order on all parties present at this Application and on all parties who

are presently on the service list established in these proceedings and such service shall be deemed good and sufficient for all purposes.

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

Justice of the Court of King's Bench of Alberta

Appendix “A”

Sales and Investment Solicitation Process

SALE AND INVESTMENT SOLICITATION PROCESS

Introduction

Griffon Partners Operation Corp. (“**GPOC**”), Griffon Partners Holding Corp. (“**GPHC**”), Griffon Partners Capital Management Ltd. (“**GPCM**”, and together with GPOC and GPHC, the “**Griffon Entities**”), Spicelo Limited (“**Spicelo**”), Stellion Limited, 2437799 Alberta Ltd., 2437801 Alberta Ltd. and 2437815 Alberta Ltd. (collectively with the Griffon Entities, the “**Debtors**”) filed Notices of Intention to Make a Proposal (the “**NOI Proceedings**”) with the Office of the Superintendent of Bankruptcy Canada pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) on August 25, 2023. Alvarez and Marsal Canada Inc. was appointed as the trustee under the proposal (the “**Proposal Trustee**”) of the Debtors.

On September 22, 2023, the Alberta Court of King’s Bench (the “**Court**”) granted an Order, among other things, approving of the Debtors’ engagement of Alvarez & Marsal Canada Securities ULC (the “**Transaction Agent**”).

On October 18, 2023, the Court granted an Order (the “**SISP Order**”) approving the sale and investment solicitation procedures set forth herein (the “**SISP Procedures**”). The SISP Order and these SISP Procedures shall exclusively govern the sale and investment solicitation process (the “**SISP**”) for soliciting and selecting bids for the sale of shares or assets of the Griffon Entities (or any one of them), or of a refinancing, reorganization, recapitalization, restructuring or other business transaction involving the Debtors, or any one of them.

SISP Procedures

These SISP Procedures describe, among other things: (a) the manner and timelines by which any interested party may gain access to due diligence materials concerning the Debtors and their business; (b) the manner and timelines by which potential bidders may submit an offer for an investment in the Debtors or an offer to purchase some or all of the Griffon Entities’ assets, property, undertakings and/or shares; (c) the manner in which potential bidders and bids become Qualified Bidders and Qualified Bids (as defined below), respectively; (d) the receipt and negotiation of bids received; and (e) the ultimate selection of one or more bids, and the approval thereof by the Court.

The Debtors and the Proposal Trustee, with the assistance of the Transaction Agent, shall implement these SISP Procedures in accordance with the terms hereof and the SISP Order. Interested parties who wish to have their bids considered shall participate in the SISP in accordance with these SISP Procedures.

In the event that there is a disagreement or a clarification is required as to the interpretation or application of these SISP Procedures or the responsibilities of any person hereunder, the Court will have the jurisdiction to resolve such dispute or provide such clarification, and provide any advice

or directions as are necessary, upon application of the Debtors, the Proposal Trustee or any other interested person.

In the event of the conversion of the NOI Proceedings to other insolvency or restructuring proceedings, the SISP will continue under those proceeding, subject to any changes proposed to and confirmed by the Court.

Opportunity

The SISP Procedures are intended to solicit interest in, and opportunities for: (a) the purchase of some or all of the assets of the Griffon Entities (each, an “**Asset Transaction**”); (b) an investment in the Griffon Entities, including through the purchase or acquisition of the shares of some or all of the Griffon Entities (each, a “**Share Transaction**”); (c) a refinancing of the Debtors through the provision of take out or additional financing in the Debtors (each, a “**Refinancing Transaction**”), or some combination thereof (each, a “**Transaction**”). All interested parties are encouraged to submit a Non-Binding LOI (as defined below) and a Qualified Bid based on any configuration they wish, provided, however, that in no cases shall an Asset Transaction or a Share Transaction include the shares or assets of Spicelo. In all cases, the shares and/or assets of Spicelo shall be limited in this SISP to a Refinancing Transaction.

SISP Timeline

The SISP shall be conducted subject to the terms hereof and the following key milestones:

Milestone	Date	Date
Transaction Agent shall advertise SISP and distribute Teaser and NDA	Within 7 calendar days of SISP Order	October 25, 2023
Due diligence period (NDAs signed, access to VDR granted and site visits organized)	12 calendar days after SISP Order until Final Bid Deadline	October 30, 2023 – January 8, 2024
Non-Binding LOI Deadline	56 calendar days after SISP Order	December 12, 2023
Final Bid Deadline	End of due diligence period	January 8, 2024
Bid assessment	Within 5 business days of Final Bid Deadline	January 15, 2024
Notification of Auction Date (if applicable)	Within 5 business days of completion of bid assessment	January 22, 2024
Auction Date (if applicable)	2 business days after notification of Auction Date	January 24, 2024

Milestone	Date	Date
Period of time to finalize definitive documents for Successful Bid (if applicable)	Within 10 calendar days of acceptance of the Successful Bid	~January 26, 2024 (if no Auction) ~February 5, 2024 (if Auction)
Court approval of Successful Bid (if applicable)	Within 14 calendar days of acceptance of the Successful Bid (subject to Court availability)	~January 30, 2024 (if no Auction) ~February 9, 2024 (if Auction)

The Debtor and the Proposal Trustee, with the assistance of the Transaction Agent, will use reasonable efforts to complete the SISP Procedures in accordance with the foregoing. The Proposal Trustee may make such adjustments to the timeline that it determines are reasonably necessary in order to accommodate unforeseen circumstances and/or best facilitate the SISP to maximize the value of the Debtors for the benefit of stakeholders, in all cases upon notice to all interested parties actively participating in the SISP at the applicable time.

“As Is, Where Is”

Any Asset Transaction or Share Transaction completed hereunder will be on an “as is, where is” basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Debtors, or any one of them, or their respective agents, except to the extent set forth in the Definitive Agreement (as defined below) with the Successful Bidder (as defined below).

Neither the Proposal Trustee, the Transaction Agent, the Debtors, nor any of their respective affiliates, advisors, agents or representatives makes any representation or warranty as to title, description, fitness for purpose, merchantability, quantity, conditions or quality of any of the property or the accuracy or completeness of the information contained in any of the Teaser, Confidential Information Memorandum or in the VDR, except to the extent otherwise provided by the Debtors under a Definitive Agreement (as defined below) with a Successful Bidder executed and delivered by the Debtors. The Debtors are not required to inspect or count, or provide any inspection or counting, of the property or any part thereof and each Qualified Bidder shall be deemed, at its own expense, to have relied entirely on its own inspection and investigation with respect to the property. It shall be the Successful Bidder’s sole responsibility to obtain, at its own expense, any consents to such transfer and any further documents or assurances which are necessary or desirable in the circumstances.

Free of Any and All Claims and Interests

All of the right, title and interest of the Griffon Entities in and to any assets sold or transferred within the SISP will, at the time of such sale or transfer, be sold or transferred free and clear of

any security, charge or other restriction (collectively, the “**Claims and Interests**”) pursuant to any approval and vesting order(s) or reverse vesting order(s) made by the Court and section 65.13 of the BIA. Contemporaneous with such approval and vesting order(s) or reverse vesting order(s) being made, all such Claims and Interests shall attach to the net proceeds of the sale of such assets (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the Definitive Agreement with the Successful Bidder (each as defined below) and as approved by the Court.

Solicitation of Interest

As soon as reasonably practicable after the granting of the SISP Order, the Transaction Agent, in consultation with the Debtors and the Proposal Trustee, will prepare:

- a) a list of prospective bidders. Such list will include both strategic and financial parties who, in the reasonable business judgment of the Transaction Agent and the Debtors, and in consultation with the Proposal Trustee, may be interested in and have the financial capacity to make a Qualified Bid (“**Prospective Bidders**”); and
- b) an initial offering summary (the “**Teaser**”) describing and outlining the SISP and inviting Prospective Bidders to make a Qualified Bid.

Within 7 calendar days of the issuance of the SISP Order, the Transaction Agent shall, in consultation with the Debtors and the Proposal Trustee:

- a) cause a notice regarding the SISP and such other relevant information which the Transaction Agent, in consultation with the Debtors and the Proposal Trustee, considers appropriate to be published in the BOE Report / Daily Oil Bulletin, and Globe & Mail; and
- b) distribute to Prospective Bidders the Teaser and a draft confidentiality and nondisclosure agreement (the “**NDA**”) in a form satisfactory to the Debtors, in consultation with the Proposal Trustee.

Participation Requirements and Due Diligence

Unless otherwise ordered by the Court, any Prospective Bidder or other interested party who wishes to participate in the SISP must deliver the following to the Transaction Agent prior to the distribution of any confidential information by the Debtors and/or the Transaction Agent to such Prospective Bidder or interested party (including access to the confidential virtual data room (the “**VDR**”)):

- a) an executed NDA; and
- b) an executed letter acknowledging receipt of a copy of the SISP Order (including these SISP Procedures) and agreeing to accept and be bound by the provisions contained therein and herein.

A Prospective Bidder or other interested party that has complied with each of the foregoing requirements, and who the Transaction Agent, in consultation with the Debtors and the Proposal Trustee, determines has a reasonable prospect of completing an Asset Transaction, a Sale Transaction or a Refinancing Transaction contemplated herein, will be deemed a “**Qualified Bidder**” and will be promptly notified of such classification by the Transaction Agent. For greater certainty, a “Qualified Bidder” will only continue to be deemed a “Qualified Bidder” for purposes of this SISP after the Non-Binding LOI Deadline if the Qualified Bidder submits a Non-Binding LOI in accordance with these SISP Procedures.

The Transaction Agent shall provide any person deemed to be a Qualified Bidder with access to the VDR. Each Qualified Bidder shall have such access in the VDR to materials and financial and other information relating to the shares, the assets, the property and the business of the Debtors as the Debtors, in their reasonable business judgment and in consultation with the Proposal Trustee and the Transaction Agent, deem appropriate for Qualified Bidders to conduct their due diligence.

At the discretion of the Debtors, in consultation with the Proposal Trustee and the Transaction Agent, due diligence access may also include presentations by the Debtors, or any one of them, access to on-site inspections and such other items as a Qualified Bidder may reasonably request. None of the Debtors, the Proposal Trustee, nor the Transaction Agent, or any of their respective professionals and advisors are responsible for, or have any liability with respect to, any information obtained by any Qualified Bidder. None of the Debtors, Proposal Trustee or the Transaction Agent or their respective professionals and advisors make any representations or warranties whatsoever as to the information or the materials provided, including as to the accuracy of same.

Submission of Non-Binding LOI and Qualified Bid

A Qualified Bidder that desires to propose a Transaction must:

- a) deliver a non-binding letter of intent that identifies the potential purchaser(s)/financier(s) and a general description of the assets, business and/or refinancing terms that would be the intended subject of a Qualified Bid (each, a “**Non-Binding LOI**”) to the Proposal Trustee at the address specified herein (including by email transmission) so as to be actually received by the Proposal Trustee not later than 4:00 p.m. (Calgary time) on December 12, 2023, or such later date as may be agreed by the Debtors and the Proposal Trustee, and communicated in writing to all Qualified Bidders (the “**Non-Binding LOI Deadline**”).
- b) deliver a final, written, binding offer (each, a “**Final Bid**”) to the Proposal Trustee at the address specified herein (including by email transmission) so as to be actually received by the Proposal Trustee not later than 4:00 p.m. (Calgary time) on January 8, 2024, or such later date as may be agreed by the Debtors and the Proposal Trustee, and communicated in writing to all Qualified Bidders (the “**Final Bid Deadline**”).

Requirements for Qualified Bid

A Final Bid will only be considered a Qualified Bid if it is submitted by a Qualified Bidder and complies with the following conditions (each, a “**Qualified Bid**”):

- a) it has been received by the Proposal Trustee by the Final Bid Deadline;
- b) it includes either:
 - a. a fully binding and definitive agreement, duly authorized and executed, setting out the terms and conditions of the proposed Transaction, including the aggregate amount of the proposed equity and/or debt investment, assumption of debt, if any, and details of the proposed financing (a “**Definitive Refinancing Agreement**”); or,
 - b. a fully binding and definitive purchase and sale agreement, substantially in the form provided for in the VDR, duly authorized and executed, together with all exhibits and schedules thereto, and such ancillary agreements as may be required with all exhibits and schedules thereto (a “**Definitive Purchase Agreement**”); or
 - c. some combination of a Definitive Refinancing Agreement and a Definitive Purchase Agreement, provided that such agreement is a fully binding definitive agreement that is duly authorized and executed (a “**Definitive Hybrid Agreement**”),(each a “**Definitive Agreement**”);
- c) it includes:
 - a. a statement that the Final Bid is submitted in good faith, is binding and is irrevocable until there is a Successful Bid; provided, however, that if such bid is selected as the Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
 - b. a statement that the Qualified Bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis; and
 - c. full disclosure regarding the identity of each person that is bidding or that will otherwise be sponsoring or participating in the Qualified Bid, including the identification of the Qualified Bidder’s direct and indirect owners and their principals and the full and complete terms of any such participation;
- d) it provides evidence, in form and substance reasonably satisfactory to the Debtors and the Proposal Trustee, of compliance or anticipated compliance with any and all applicable

regulatory approvals, the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;

- e) it provides evidence, satisfactory to the Debtors and the Proposal Trustee, of a firm, irrevocable financial commitment for all required funding or financing or evidence of the Qualified Bidder's financial wherewithal to close the bid using unencumbered funds on hand;
- f) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment and is not conditional upon:
 - a. approval from the Qualified Bidder's board of directors (or comparable governing body) or equityholder(s);
 - b. the outcome of unperformed due diligence by the Qualified Bidder; and/or
 - c. the bidder obtaining financing;
- g) it includes an acknowledgement and representation that the Qualified Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its Qualified Bid; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Proposal Trustee or the Transaction Agent, or any of their advisors, except as expressly stated in the Definitive Agreement; (iii) is a sophisticated party capable of making its own assessments in respect of making its Qualified Bid; and (iv) has had the benefit of independent legal advice in connection with its Qualified Bid;
- h) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Proposal Trustee), payable to the Proposal Trustee, in trust, in an amount equal to ten percent (10%) of the cash consideration or other consideration to be paid pursuant to the Qualified Bid, to be held and dealt with in accordance with these SISP Procedures; and
- i) provides such further or other information as may be reasonably requested by the Debtors and/or the Proposal Trustee.

The Proposal Trustee may, in its reasonable discretion, and in consultation with the Debtors, waive compliance with any one or more of the Non-Binding LOI and/or Qualified Bid requirements specified herein, and deem such non-compliant letter of intent or bid to be a Non-Binding LOI or Qualified Bid, as applicable, in accordance with these SISP Procedures.

If the Proposal Trustee is not satisfied with the number or terms of the Non-Binding LOIs or Qualified Bids, the Proposal Trustee, in consultation with the Debtors, may extend the Non-Binding LOI Deadline or Final Bid Deadline, as applicable, without Court approval and, unless otherwise provided for by the Proposal Trustee, all subsequent deadlines provided in these SISP Procedures shall be extended by the same time period.

Assessment of Qualified Bids

The Proposal Trustee and the Debtors will assess the Qualified Bids received, if any, and will determine whether it is likely that the transactions contemplated by such Qualified Bids are likely to be consummated. Such assessments will be made as promptly as practicable but no later than five (5) business days after the Final Bid Deadline.

If the Debtors and the Proposal Trustee determine in their reasonable discretion that one or more Qualified Bids were received and it is likely that the transactions contemplated by one or more of such Qualified Bids will be consummated:

- a) the Proposal Trustee, with the consent of the Debtors, may advise all Qualified Bidders that an auction (the “**Auction**”) will be held and that such Qualified Bidders are entitled to participate in the Auction; or
- b) the Debtors, in consultation with the Proposal Trustee, may select the superior Qualified Bid (the “**Successful Bid**” and the bidder thereof, the “**Successful Bidder**”) and file an application to the Court to approve such Successful Bid within ten (10) calendar days of acceptance thereof, and seek a hearing of such application as soon as practicable thereafter.

To the extent that Trafigura Canada Limited and/or Signal Alpha C4 Limited (together, the “**Lenders**” and each, a “**Lender**”) either: (a) provide written confirmation to the Proposal Trustee that the Lenders or a specific Lender will not participate in the SISP as a Qualified Bidder or submit a Non-Binding LOI, Final Bid or a Qualified Bid within the SISP, or (b) fail to submit a Final Bid which has been deemed a Qualified Bid, from and after such date, the Proposal Trustee may consult with such Lenders or Lender, as applicable, as to developments in the SISP and/or selection of a Successful Bid.

Auction

If an Auction is to be held, the Proposal Trustee will conduct the Auction commencing at 10:00 a.m. (Calgary time) on January 24, 2024 (the “**Auction Date**”) at the offices of the Proposal Trustee’s legal counsel, Torys LLP, Calgary, AB, or such other location as shall be timely communicated to all entities entitled to attend at the Auction, subject to such adjournments as the Proposal Trustee may consider appropriate.

The Auction shall run in accordance with the following procedures:

- c) prior to 4:00 p.m. (Calgary time) on January 22, 2024, each Qualified Bidder that has made a Qualified Bid must inform the Proposal Trustee whether it intends to participate in the Auction (the parties who so inform the Proposal Trustee that they intend to participate are hereinafter referred to as the “**Auction Bidders**”);
- d) the identity of each Auction Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Auction Bidder participating in the Auction;
- e) only representatives of the Auction Bidders, the Proposal Trustee, the Transaction Agent, the Debtors and such other persons as permitted by the Proposal Trustee, and the advisors to each of the foregoing entities, are entitled to attend the Auction in person (and the Proposal Trustee shall have the discretion to allow such persons to attend by video- or tele-conference);
- f) the Proposal Trustee may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction provided that such rules are (i) not inconsistent with these SISP Procedures or general practice in insolvency proceedings, and (ii) disclosed to each Auction Bidder at the Auction;
- g) all Auction Bidders must have at least one individual representative with authority to bind such Auction Bidder present in person at the Auction;
- h) the Proposal Trustee shall arrange to have a court reporter attend at the Auction;
- i) each Auction Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with any other person regarding the SISP without the express written consent of the Proposal Trustee and on disclosure to all other Auction Bidders;
- j) prior to the Auction, the Proposal Trustee will provide unredacted copies of the Qualified Bid(s) which the Proposal Trustee believes are the highest or otherwise best Qualified Bid(s) (the “**Starting Bid**”) to all Qualified Bidders that have made a Qualified Bid;
- k) prior to the Auction, the Proposal Trustee and the Transaction Agent shall develop a financial comparison model (the “**Comparison Model**”) which will be used to compare the Starting Bid and all Subsequent Bids (as defined herein) submitted during the Auction, if applicable;
- l) prior to the Auction, the Proposal Trustee and the Transaction Agent shall make themselves available to meet with each of the Auction Bidders to review the procedures for the Auction, the mechanics of the Comparison Model, and the manner by which Subsequent Bids (as defined below) shall be evaluated during the Auction;

- m) bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by an Auction Bidder (a “**Subsequent Bid**”) that the Proposal Trustee, utilizing the Comparison Model, determines is (i) for the first round, a higher or otherwise better offer than the Starting Bid, and (ii) for subsequent rounds, a higher or otherwise better offer than the then current highest and best bid (the “**Leading Bid**”), in each case by at least CAD\$250,000, or such amount as may be determined by the Proposal Trustee prior to, and announced at, the Auction;
- n) to the extent not previously provided (which shall be determined by the Proposal Trustee), an Auction Bidder submitting a Subsequent Bid must submit, at the Proposal Trustee’s discretion, as part of its Subsequent Bid, written evidence (in the form of financial disclosure or credit- quality support information or enhancement reasonably acceptable to the Proposal Trustee), demonstrating such Auction Bidder’s ability to close the transaction proposed by the Subsequent Bid;
- o) only the Auction Bidders will be entitled to make a Subsequent Bid at the Auction; provided, however, that in the event that any Qualified Bidder elects not to attend and/or participate in the Auction, such Qualified Bidder’s Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder if it is selected as the Successful Bid;
- p) all Auction Bidders shall have the right to, at any time, request that the Proposal Trustee announce the then-current Leading Bid and, to the extent requested by any Auction Bidder, use reasonable efforts to clarify any and all questions such Auction Bidder may have regarding the Leading Bid;
- q) the Proposal Trustee reserves the right, in its reasonable business judgment, to make one or more adjournments in the Auction to, among other things (i) facilitate discussions between the Proposal Trustee and the Auction Bidders; (ii) allow the individual Auction Bidders to consider how they wish to proceed; (iii) consider and determine the current highest and best offer at any given time in the Auction; and (iv) give Auction Bidders the opportunity to provide the Proposal Trustee with such additional evidence as the Proposal Trustee, in its reasonable business judgment, may require that that Auction Bidder has sufficient internal resources to consummate the proposed transaction at the prevailing overbid amount;
- r) if, in any round of bidding, no new Subsequent Bid is made, the Auction shall be closed; and
- s) no bids (from Qualified Bidders or otherwise) shall be considered after the conclusion of the Auction.

At the end of the Auction, the Proposal Trustee shall announce the Successful Bid and the Successful Bidder. Upon selection of a Successful Bidder, the Successful Bidder shall deliver as

soon as practicable and, in any event, by no later than five (5) calendar days, an executed Definitive Agreement, which reflects its Successful Bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the application material for the hearing to consider the Approval Application (as defined below).

If an Auction is conducted, the Auction Bidder and/or Qualified Bidder, as applicable, with the next highest or otherwise best Qualified Bid at the Auction or, if such Qualified Bidder did not participate in the Auction, submitted in this SISP, as determined by the Debtors and the Proposal Trustee, will be designated as the backup bidder (the “**Backup Bidder**”). The Backup Bidder shall be required to keep its Qualified Bid (or if the Backup Bidder submitted one or more overbids at the Auction, the Backup Bidder’s final overbid) (the “**Backup Bid**”) open until the earlier of (a) two (2) business days after the date of closing of the Successful Bid; and (b) February 16, 2024 (the “**Outside Date**”).

The Debtors, in consultation with the Proposal Trustee, shall have selected the final Successful Bid(s) and the Backup Bid(s) as soon as reasonably practicable after the Auction Date and the Definitive Agreement finalized and executed by no later than February 5, 2024, which Definitive Agreement shall be conditional only upon the receipt of the Approval Order (as defined below) and the express conditions set out therein and shall provide that the Successful Bidder shall use all reasonable efforts to close the Successful Bid by no later than February 9, 2024, or such longer period as may be agreed to in writing by the Proposal Trustee. In any event, the Successful Bid must be closed by no later than the Outside Date, or such other date as may be agreed to in writing by the Proposal Trustee.

Approval of Successful Bid

All Qualified Bids and Subsequent Bids, including the Successful Bid and/or the Backup Bid, may be submitted by the Proposal Trustee to the Alberta Energy Regulator (“**AER**”) and/or the Saskatchewan Ministry of Energy and Resources (“**MER**”), on appropriate confidentiality undertakings, for review and approval by the AER and/or the MER.

The Debtors shall apply to the Court (the “**Approval Application**”) for an order approving the Successful Bid and the Backup Bid (as applicable) and/or the mechanics to authorize the Debtors to complete the transactions contemplated thereby, as applicable, and authorizing the Debtors to (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid, (ii) undertake such other actions as may be necessary to give effect to such Successful Bid, and (iii) implement the transaction(s) contemplated in such Successful Bid (the “**Approval Order**”).

The Approval Application will be held on a date to be scheduled by the Debtors and confirmed by the Court. The Debtors shall use best efforts to schedule the Approval Application on or before February 9, 2024 subject to Court availability. The Approval Application may be adjourned or rescheduled by the Debtors on notice to the service list prior to the Approval Application. The

Debtors shall consult with the Successful Bidder and the Backup Bidder regarding the application material to be filed by the Debtors for the Approval Application, which material shall be acceptable to the Successful Bidder, acting reasonably.

If, following approval of the Successful Bid by the Court, the Successful Bidder fails to consummate the transaction for any reason, then such Successful Bidder will forfeit its Deposit and the Backup Bid, if there is one, will be deemed to be the Successful Bid hereunder and the Debtors shall effectuate a transaction with the Backup Bidder subject to the terms of the Backup Bid, without further order of the Court.

All Qualified Bids (other than the Successful Bid) shall be deemed rejected on and as of the date of the closing of the Successful Bid.

Deposits

All Deposits shall be retained by the Proposal Trustee in a bank account specified by the Proposal Trustee. If there is a Successful Bid, the Deposit paid by the Successful Bidder whose bid is approved at the Approval Application shall be applied to the purchase price to be paid by the Successful Bidder upon closing of the approved transaction and will be non-refundable. The Deposit paid by the Backup Bidder shall be retained by the Proposal Trustee until two (2) business days after the date of closing of the Successful Bid or the Outside Date, whichever is later, or, if the Backup Bid becomes the Successful Bid, shall be released by the Proposal Trustee and applied to the purchase price to be paid upon closing of the Backup Bid.

All Deposits of all Qualified Bidders not selected as the Successful Bidder or Backup Bidder shall be returned to such bidders within five (5) business days of the date upon which the Successful Bid and any Backup Bid is approved by the Court. If the Auction does not take place or these SISP Procedures are terminated in accordance with the provisions hereof, all Deposits shall be returned within five (5) business days of the date upon which it is determined that the Auction will not take place or these SISP Procedures are terminated, as applicable.

If an entity selected as the Successful Bidder or Backup Bidder breaches its obligations to close the applicable transaction, it shall forfeit its Deposit to the Debtors; provided, however, that the forfeit of such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Debtors have against such breaching entity.

Approvals and Reservation of Rights

For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by any other statute or are otherwise required at law in order to implement a Successful Bid or Backup Bid, as the case may be.

The Debtors may, at any time, and in consultation with the Proposal Trustee, reject or choose not to accept any Transaction, Non-Binding LOI, Final Bid, Qualified Bid or Successful Bid. In the

event the Proposal Trustee disagrees with the Debtors' rejection or choice not to accept a Transaction, Non-Binding LOI, Final Bid, Qualified Bid or Successful Bid, the Proposal Trustee may file an application to the Court and upon two days' notice seek such relief as the Proposal Trustee may deem necessary.

These SISP Procedures do not, and shall not be interpreted to, create any contractual or other legal relationship between the Debtors, Proposal Trustee, the Transaction Agent and any potential bidder, Qualified Bidder, Auction Bidder, Successful Bidder or Backup Bidder, other than as specifically set forth in any Definitive Agreement.

Notice

The addresses used for delivering documents to the Debtors and the Proposal Trustee as required by the terms and conditions of these SISP Procedures are set out below.

To the Debtors:

Osler, Hoskin & Harcourt LLP
Suite 2700, Brookfield Place
225 – 6th Avenue S.W.
Calgary AB T2P 1N2

Attention: Randal Van de Mosselaer / Emily Paplawski
Phone: (403) 260-7060 / (403) 260-7071
Email: Rvandemosselaer@osler.com / Epaplawski@osler.com

To the Transaction Agent:

Alvarez & Marsal Canada Securities ULC
Bow Valley Square IV
Suite 1110, 250 – 6th Avenue SW
Calgary, AB T2P 3H7

Attention: Scott Asplund / Chad Ellison
Phone: (403) 538-7530 / (403) 538-7540
Email: sasplund@alvarezandmarsal.com / cellison@alvarezandmarsal.com

To the Proposal Trustee:

Alvarez & Marsal Canada Inc.
Bow Valley Square IV
Suite 1110, 250 – 6th Avenue SW
Calgary, AB T2P 3H7

Attention: Orest Konowalchuk / Duncan MacRae
Phone: (403) 538-4736 / (403) 538-7514
Email: okonowalchuk@alvarezandmarsal.com / dmacrae@alvarezandmarsal.com

with a copy to:

Torys LLP
525 – 8th Avenue SW, 46th Floor, Eighth Avenue Place East
Calgary, AB T2P 1G1

Attention: Kyle Kashuba
Phone: (403) 403-776-3744
Email: kkashuba@torys.com

No Amendment

There shall be no amendments to these SISP Procedures without the prior written consent of the Proposal Trustee, or further order of the Court obtained on reasonable notice to the Debtors and the Proposal Trustee.

Further Orders

At any time during the SISP, the Debtors and/or Proposal Trustee may apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.